In the Supreme Court of the United States

October Term, 1971

No. 71-1377

THE OHIO ANNUAL CONFERENCE OF THE METHODIST CHURCH, an Ohio corporation not for profit, *et al.*,

Petitioners,

vs.

BETHANY CHAPEL, INC., an Ohio corporation not for profit, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENTS IN OPPOSITION

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JURISDICTIONAL QUESTION

Respondent respectfully submits that the petition for certiorari filed herein should be denied for the following reasons:

1. The federal question raised by the petition has heretofore been determined by this Court.

2. The federal question raised by the petition has been decided by the state court in accord with the applicable decisions of this Court.

3. The decision of the state court is based on adequate and independent state grounds.

4. There are no special or important reasons for granting the petition. The questions raised by the petition are not of any great public or general interest but are only of interest to the parties involved.

As stated in Rule 19 of this Court, the review is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.

This Court is already overburdened with work and should not be required to apply its valuable time to a case of this kind.

STATEMENT OF CASE

On September 9, 1969, the congregation of the Bethany United Methodist Church met and voted to withdraw from the Annual Conference of the United Methodist Church. The members of the congregation voted to incorporate under the name of Bethany Chapel, and on September 12, 1969, Articles of Incorporation were issued by the Secretary of the State of Ohio to Bethany Chapel, and on September 15, 1969, the official board of the Ohio corporation, Bethany Chapel, voted to transfer any funds to an account in the name of Bethany Chapel, and it was done.

On September 16, 1969, eight (8) trustees of the old church as trustees of Bethany United Methodist Church

executed a deed for the church property to Bethany Chapel, an Ohio corporation, and that deed was filed with the Auditor of Lucas County, Ohio, on September 17, 1969, and recorded in the office of the Recorder of Lucas County, Ohio, on September 17, 1969. Thus, all of the real and personal property of Bethany United Methodist Church had been transferred to the Ohio corporation Bethany Chapel by September 17, 1969, and there no longer existed a legal entity known as Bethany United Methodist Church, and when the petitioners filed the original petition in this cause on November 14, 1969, and named nine (9) trustees and officers of Bethany United Methodist Church, no such officers or trustees had any legal existence. Petitioners did name Bethany Chapel, Inc., and as of that time that was the only legal entity and the real and personal property was vested in that legal entity by virtue of the legal processes spelled out by the Legislature of the State of Ohio, and by "the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state," all being "secular instruments not requiring the resolution of religious tenets or doctrine." It is true that the petitioners named the nine (9) former officers and trustees of a then defunct church group, and named the corporation Bethany Chapel, Inc., and the same nine (9) trustees and officers in the amended petition filed on April 6, 1970 (Petitioners' Appendix 6), to which a demurrer was directed.

The Court of Appeals of Lucas County, Ohio, affirmed the judgment of the Common Pleas Court of Lucas County, Ohio. On November 1, 1971, the Court of Appeals of Lucas County, Ohio, entered its judgment affirming the judgment of the Common Pleas Court of Lucas County, Ohio (Petitioners' Appendix 3).

The petitioners filed a motion asking the Ohio Supreme Court to direct the Court of Appeals of Lucas County, Ohio to certify its record. In the courts of Ohio the petitioners cited the constitutional amendments and the cases cited in its brief herein, as well as many more cases. The Ohio Supreme Court overruled petitioners' motion in that court (Petitioners' Appendix 1).

The respondents deny that the issue herein is one of public or great general interest. Further, respondents say that the constitutional question herein has already been decided by this Court in conformity to the judgment from which petitioners seek a review.

REASONS WHY CERTIORARI SHOULD BE DENIED

The federal question attempted to be raised by petitioners in this case has heretofore been determined by this Court.

The federal question raised by the petitioners in this case has, heretofore recently been authoritatively determined by this Court in several decisions. The petition raises no new or novel questions.

We direct attention to the following decisions recently made by this Court and which adequately cover the subject: Petitioners cite *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154 (1970), Cert. denied 400 U.S. 827 (1970), but do not cite the entire history of that case.

On August 2, 1967, the Court of Appeals for the Ninth Judicial District of Ohio in No. 5914 found in favor of *Kelemen, et al.*, the defendants-appellees who had prevailed in the trial court.

On January 17, 1968, the Ohio Supreme Court overruled the motion to certify.

On January 17, 1968, the Ohio Supreme Court dismissed the appeal as of right.

On February 14, 1968, the Ohio Supreme Court denied the application for rehearing.

On February 24, 1969, in No. 91, this Court granted the petition for cert. and remanded the case to the Ohio Supreme Court for further consideration in light of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church ante,* 393 U.S. 440, 89 S. Ct. 601.

On March 4, 1970, the Ohio Supreme Court remanded the case to the Court of Appeals for the Ninth Judicial District of Ohio, calling that Court's attention to the per curiam of this Court. 21 Ohio St. 2d 154.

On April 29, 1970, the Ohio Supreme Court denied the application for rehearing.

On October 12, 1970, this Court denied petition for cert. 400 U.S. 827.

On August 11, 1971, the Court of Appeals for the Ninth Judicial District of Ohio reversed its decision of August 2, 1967, and in Cause No. 5914 used these words:

> ". . . It is such determinations that we are prevented from making by the pronouncements of three of the Justices of the Supreme Court of the United States, in language from the case of *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg,* 396 U.S. 367, 24 L ed 2d 582, 90 S. Ct. 499 at 24 L ed 2d 584:

"* * * To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine. Similarly, where the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolutions of the controversy. In other words, the use of the *Watson* approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and *without extensive inquiry into religious polity.*' (Emphasis by Court of Appeals.)

"When the *Sharpsburg case, supra,* is read, along with the case of *Presbyterian Church v. Hull Church, supra,* we find, according to the pronouncements therein, that the First Amendment to the Constitution of the United States directs civil courts to decide church property controversies without resolving underlying disputes over religious doctrine and to refrain from an extended search of church practice. Therefore, if a conclusion in favor of hierarchal authority is reached herein, we would be doing that which the First Amendment directs us not to do."

On January 28, 1972, the Ohio Supreme Court dismissed the appeal of *Kelemen, et al.* in No. 71-753, see OHIO BAR Vol. XLV, No. 6, February 7, 1972 at page 165 (the same day on which the Ohio Supreme Court dis-

missed the appeal in this case in No. 71-770, page 165, OHIO BAR Vol. XLV, No. 6).

On March 4, 1972, a petition for certiorari was filed in this Court and the cause appears as Case Docket 71-1128 in 40 LAW WEEK, page 3444, *Kelemen, et al., Petitioners v. Serbian Orthodox Church.*

Further proceedings were had in that case which appear at page 3455 of 40 LAW WEEK.

On April 4, 1972, a summary of the lower court's decision appears at page 3487 of 40 LAW WEEK.

On April 24, 1972, this Court entered a summary order saying that review was denied. 40 LAW WEEK, page 3511. The question in the *Serbian* case was and is the same question involved in our case. The Court of Appeals of Lucas County, Ohio cited the 1970 decision of the Ohio Supreme Court in *Serbian Orthodox Church Congregation of St. Demetrius v. Kelemen*, 21 Ohio St. 2d 154, in affirming the ruling of the trial court.

Eldership v. Church of God at Sharpsburg, 396 U.S. 367, 90 S. Ct. 499 (January 19, 1970);

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 396 U.S. 1041, 90 S. Ct. 680 (January 19, 1970);

Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S. Ct. 601 (January 27, 1969).

This Court is already heavily burdened with cases involving new and important issues of general public interest. Our case is of interest only to the immediate parties concerned.

Petitioner also attempts to raise some other federal questions, but they are without substance and do not merit the attention of this Court.

The state court has decided all federal questions submitted to it in accord with the applicable decisions of this Court.

The established law of Ohio as to connectional churches that is cited by petitioners ceased to be the law of Ohio on that day in 1970 when the Ohio Supreme Court said:

> ". . . All the agonies of a church controversy are discernible from a review of this case, but we are convinced by the rule of the *Hull Memorial* case that the civil court's role as a tribunal to bring order to church controversies is narrowly limited.
>
> "The control of the name and property, of the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio, must be determined only by reference to the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state, and any other secular instrument not requiring the resolution of religious tenets or doctrine. . . ."
>
> *Serbian Orthodox Church v. Kelemen*, 21 Ohio St. 2d 154, at pages 161, 162.

A decision bottomed upon this Court's decision in *Eldership v. Church of God at Sharpsburg*, 396 U.S. 367, the January 19, 1970 decision in which Mr. Justice Brennan said at page 370:

> ". . . Neutral principles of law, developed for use in all property disputes, Presbyterian Church, supra, at

449, 21 L Ed 2d at 665, provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. . . ."

On that day the Ohio decisions cited ceased to be applicable to the fact situation in the *Serbian* and the *Bethany* cases.

In deciding Bethany the state courts had before them the *Eldership* case decided January 19, 1970, and the 1969 decision including the decision in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, to which case this Court made reference in its remand of the *Serbian Orthodox Church v. Kelemen* case on February 29, 1969, 393 U.S. 527.

The decision of the Ohio Court rests on independent and adequate state grounds.

In deciding *Kelemen* after the remand the Ohio Supreme Court said:

". . . Recorded deeds show that the corporation holds legal title to all church property. A review of Ohio law does not reveal recognition of an implied-trust theory of real property when a local church joins a church hierarchy. Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding church doctrine. There are no deeds or other written evidence of conveyance from the local congregation either to the diocese or the Mother Church. . . ."

21 Ohio St. 2d 154 at 160

Petitioners make no claim that the respondents, or any of them, had ever at any time executed a deed transferring title to any real property to petitioners, or that the respondents had at any time executed or created a trust thus holding the property, real or personal, for the benefit of petitioners. It all comes down to this—the only claim that is made by petitioners is that the petitioners adopted paragraph 1519.3 of the Book of Discipline. (Petitioners' Appendix 6) of the United Methodist Church. In plain words, the petitioners say that when the leaders of the Evangelical United Brethren Church and the Methodist Church met in Chicago on November 11, 1966, and by vote merged the two churches and adopted the Book of Discipline of the United Methodist Church in 1968, that by those actions the newly created United Methodist Church became vested with all of the real and personal property of all of the congregations of both sects situated any place in the United States, and that without the consent of the members of Bethany Chapel, or any other congregational church.

At no place in the amended petition (Petitioners' Appendix 6), to which the demurrer was directed, did the petitioners claim title to real and personal property except in paragraph 1519.3 which paragraph was adopted by petitioners in 1968. At no place in the amended petition do the petitioners claim that the respondents created a trust for the benefit of the United Methodist Church.

Petitioners in their amended petition state the claimed facts as to the three (3) parcels of real estate, but at no place make claim that the Ohio Annual Conference of the Methodist Church was named as the grantee in any of the deeds whereby Bethany Chapel, or any of its predecessors, received title to the real estate, or that a trust

for the benefit of petitioners, or any of them, was set out in the deeds, or any other instrument or instruments. The same is true as to the two (2) separate funds in the amount of $27,000.00.

Petitioners make claim that the United Methodist Church is a connectional church. The trial court found that under the decision law of both this Court and the Ohio Supreme Court, that is not true, and the Court of Appeals of Lucas County, Ohio affirmed that judgment (Petitioners' Appendix 3).

The trial court correctly ruled that under Ohio law that the petitioners were seeking to create an express trust by their own act in adopting paragraph 1503.1 of the Book of Discipline and paragraph 1537 of the Book of Discipline (Petitioners' Appendix 6), when the Ohio law says that an express trust must be created by the settlor of the trust, and that a court of equity will not create one for him. In *Church v. Kelemen, supra,* the Ohio Supreme Court rejected the implied-trust theory of real property.

Petitioners give the whole thing away by setting out paragraph 1537 of the Book of Discipline (Petitioners' Appendix 6) where we find these words:

> "Every instrument of conveyance of real estate shall contain the appropriate trust clause as set forth in the Discipline paragraph 1530."

The petitioners sought to create a trust by their own act. Under the law of Ohio that could not be done:

> "But an express trust must be created by the settlor; the court of equity will not create it for him."
>
> Sec. 23, 53 O. JUR. 2d, pages 431, 432.

There are no special or important reasons for granting the petition. The questions raised by the petition are not of any great public or general interest but are only of interest to the parties involved.

Petitioners seek to assign nonexistent reasons for granting of the petition. Petitioners claim great public or general interest exists in this case involving a handful of churchmen who are members of Bethany Chapel. In its petition reference is made to the monstrous injustice arising from the decision of the Ohio Supreme Court in *Bethany*. If counsel for the respondents understand the facts, that injustice grew out of the Ohio courts awarding to its true owners the property that was the subject of the controversy, and that decision was bottomed upon the decision of this Court. Petitioners bottomed their claims in the trial court upon the provisions of the Book of Discipline of the United Methodist Church and accused respondents of taking and holding title under the provisions of the secular law of Ohio. The Ohio courts merely followed the law as handed down by this Court and adopted by the highest courts in Ohio.

CONCLUSION

To summarize our argument, it is our contention that the judgment of the state court is correct and the petition for certiorari should be overruled.

The federal question attempted to be raised by petitioners in this case has already been completely and authoritatively determined by this Court.

The state court has correctly interpreted and applied the decisions of this Court.

The petition fails to state any new or novel question which has not already been decided by this Court. The issues have no great public interest but are of interest to the parties only. There are no special or important reasons for granting the petition.

To grant the petition would only unnecessarily burden this Court with work, when the Court is already overburdened.

The decision of the state court was correct and should be allowed to stand. The petition for certiorari should be denied.

Respectfully submitted,

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